

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Court
Southern District of Texas
FILED
OCT 01 2004
Michael A. Bulby, Clerk

SHAJAHAN SARKAR,
Plaintiff

§

VS.

§

CIVIL ACTION NO. H-04 3824

PETROLEUM WHOLESALE, LP,
AND JOHN W. COOK, IN HIS
INDIVIDUAL AND OFFICIAL
CAPACITIES,

Defendants

§

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

This is an action arising under the Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U.S.C. § 201 *et seq.* (1994 ed. and Supp. III) ("FLSA"). This action is brought, for the time being, only as an individual action, but should discovery uncover other similarly situated employees, plaintiff reserves the right to bring this as a collective action to recover unpaid overtime compensation, liquidated damages, and attorney's fees owed to plaintiff Shajahan Sarkar and all other similarly situated employees employed by, or formerly employed by defendants, its subsidiaries and affiliated companies. This suit is also brought against defendant John W. Cook, in his individual and official capacities.

Parties

1. Plaintiff Shahjahan Sarkar is a former employee of defendants, as that term is defined by the FLSA, and is represented by the undersigned.
2. Petroleum Wholesale, LP ("Petroleum") is a business entity authorized to do business in the State of Texas, and is an employer as that term is defined by the FLSA. With respect to plaintiff, Petroleum is subject to the provisions of the FLSA. Petroleum maintains its office at 3648

#2429

FM 1960 West, Suite 200, Houston, Texas 77068. Petroleum was at all relevant times an enterprise engaged in commerce or in the production of goods for commerce, as defined by 29 U.S.C. §§ 203(r) and (s). Petroleum's registered agent is Mr. John W. Cook, who may be served at 3648 FM 1960 West, Suite 200, Houston, Texas 77068, or wherever else he may be found.

3. Defendant John Cook is liable to plaintiff in his individual and official capacity as he was an employer of the plaintiff, as that term is defined by the FLSA; had overall operational control of Petroleum; he possessed an ownership interest in this entity; he controlled significant funds of this entity; and he determined the employees' salaries and made hiring decisions. Therefore, Cook was and is subject to the provisions of the FLSA. Moreover, Cook was engaged in commerce or in the production of goods for commerce, as defined by 29 U.S.C. §§ 203(r) and (s). Cook may be served at 3648 FM 1960 West, Suite 200, Houston, Texas 77068, or wherever else he may be found.

Jurisdiction and Venue

4. This Court has jurisdiction under the FLSA, and venue is proper pursuant to 28 U.S.C. § 1391(b), as defendants and plaintiff transacted business within this judicial district, and the events underlying this complaint occurred within this judicial district as well.

Factual Allegations

5. Plaintiff Sarkar worked for defendants as a cashier, and consistently worked over 40 hours per week. Luckily, Sarkar kept a record of every day that he worked overtime, a copy of which has already been provided to Defendants in an attempt to settle this matter out of court.

6. At all times relevant hereto, the defendants knew of, approved of, and benefitted from plaintiff's regular and overtime work.

7. Plaintiff did not ever serve in the capacity of an executive, administrator, professional or outside sale representative, as those terms are understood pursuant to 29 C.F.R. § 541. Therefore, plaintiff was not exempt from the protection of the FLSA.

8. There was never any understanding, written or verbal, between plaintiff and defendants regarding a fluctuating work week, nor did defendants make any attempt to modify plaintiff's work week by changing it to a variable work week or fluctuating work week as permitted by a partial exemption under the FLSA and corresponding regulations.

9. Defendants did not make a good faith effort to comply with the overtime provisions contained within the FLSA.

10. Defendants' actions were willful and in blatant disregard for plaintiff's federally protected rights.

CAUSE OF ACTION

Unpaid Overtime Wages

11. Based on the foregoing, defendants violated the FLSA by failing to compensate plaintiff at one and a half times their hourly wage plaintiff should have been paid for time worked in excess of 40 hours per work week, contrary to the requirements of Section 7 of 29 U.S.C. § 207.

12. Plaintiff has suffered damages as a direct result of defendants' illegal actions.

13. Defendants are liable to plaintiff and all other similarly situated employees for all unpaid overtime compensation, liquidated damages, attorney's fees and costs of Court under the FLSA by failing to compensate plaintiff and all other similarly situated employees at one and a half times their regular hourly rates for time worked in excess of 40 hours per work week, for the three-year period preceding the filing of this lawsuit.

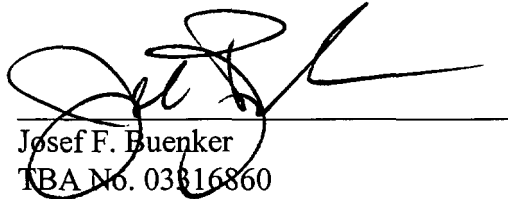
Demand for Jury Trial

14. Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Prayer for Relief

15. Plaintiff asks this Court to hold the defendants jointly and severally liable for violations of the FLSA, and that Plaintiff be awarded all overtime wages owed to him, that he be awarded liquidated damages in an amount equal to all unpaid overtime wages, that he be awarded his attorney's fees and costs, and for all other legal and injunctive relief the Court deems necessary and proper.

Respectfully Submitted,



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ATTORNEY-IN-CHARGE FOR PLAINTIFF

OF COUNSEL:

LAW OFFICES OF JOSEF F. BUENKER, P.C.

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Shajahan Sarkar

DEFENDANTS

Petroleum Wholesale, LP
John W. CookCounty of Residence of First Listed Defendant Harris
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(b) County of Residence of First Listed Plaintiff Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Josef F. Buenker
1225 N. Loop West, Ste. 1020
Houston, TX 77008 713-868-3388

Attorneys (If Known)

H-04 3824

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- G 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
- G 2 U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF ☒ DEF Incorporated or Principal Place of Business In This State G 4 ☒ DEF
- Citizen of Another State G 2 G 2 Incorporated and Principal Place of Business In Another State G 5 G 5
- Citizen or Subject of a Foreign Country G 3 G 3 Foreign Nation G 6 G 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
G 110 Insurance G 120 Marine G 130 Miller Act G 140 Negotiable Instrument G 150 Recovery of Overpayment & Enforcement of Judgment G 151 Medicare Act G 152 Recovery of Defaulted Student Loans (Excl. Veterans) G 153 Recovery of Overpayment of Veteran's Benefits G 160 Stockholders' Suits G 190 Other Contract G 195 Contract Product Liability	PERSONAL INJURY G 310 Airplane G 315 Airplane Product Liability G 320 Assault, Libel & Slander G 330 Federal Employers' Liability G 340 Marine G 345 Marine Product Liability G 350 Motor Vehicle G 355 Motor Vehicle Product Liability G 360 Other Personal Injury	PERSONAL INJURY G 362 Personal Injury—Med. Malpractice G 365 Personal Injury—Product Liability G 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY G 370 Other Fraud G 371 Truth in Lending G 380 Other Personal Property Damage G 385 Property Damage Product Liability	G 422 Appeal 28 USC 158 G 423 Withdrawal 28 USC 157 PROPERTY RIGHTS G 820 Copyrights G 830 Patent G 840 Trademark SOCIAL SECURITY G 861 HIA (1395ff) G 862 Black Lung (923) G 863 DIWC/DIWW (405(g)) G 864 SSID Title XVI G 865 RSI (405(g)) FEDERAL TAX SUITS G 870 Taxes (U.S. Plaintiff or Defendant) G 871 IRS—Third Party 26 USC 7609	G 400 State Reapportionment G 410 Antitrust G 430 Banks and Banking G 450 Commerce/ICC Rates/etc. G 460 Deportation G 470 Racketeer Influenced and Corrupt Organizations G 810 Selective Service G 850 Securities/Commodities/Exchange G 875 Customer Challenge 12 USC 3410 G 891 Agricultural Acts G 892 Economic Stabilization Act G 893 Environmental Matters G 894 Energy Allocation Act G 895 Freedom of Information Act G 900 Appeal of Fee Determination Under Equal Access to Justice G 950 Constitutionality of State Statutes G 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
G 210 Land Condemnation G 220 Foreclosure G 230 Rent Lease & Ejectment G 240 Torts to Land G 245 Tort Product Liability G 290 All Other Real Property	G 441 Voting G 442 Employment G 443 Housing/Accommodations G 444 Welfare G 440 Other Civil Rights	G 510 Motions to Vacate Sentence Habeas Corpus: G 530 General G 535 Death Penalty G 540 Mandamus & Other G 550 Civil Rights G 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding G 2 Removed from State Court G 3 Remanded from Appellate Court G 4 Reinstated or Reopened G 5 Transferred from another district (specify) G 6 Multidistrict Litigation G 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

FLSA, 50 Stat. 1060, as amended 29 U.S.C. Sec. 201, et seq. Suit to recover unpaid overtime compensation.

VII. REQUESTED IN COMPLAINT: G CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes G No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OR RECORD

Sept. 30, 2004

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE